

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;  
Ann C. Fisher, Vice Chairman;  
Mark Acton;  
Ashley E. Poling; and  
Robert G. Taub

Competitive Product Prices  
Inbound E-format Letter Post

Docket No. CP2022-58

NOTICE OF A PRELIMINARY DETERMINATION TO UNSEAL SELF-DECLARED  
RATES FOR INBOUND LETTER POST SMALL PACKETS AND BULKY LETTERS

(Issued August 29, 2022)

I. INTRODUCTION

On April 29, 2022, the Postal Service provided notice of specific per-item and per-kilogram self-declared prices for its Inbound Letter Post Small Packets and Bulky Letters product effective on January 1, 2023.<sup>1</sup> The Postal Service filed these rates under seal and requested that the Commission accord these rates non-public treatment. Notice at 4; *id.* Attachment 1 (Application). In accordance with 39 U.S.C. § 504(g)(3) and 39 C.F.R. § 3011.103(c), the Commission provides notice of its preliminary determination that it is not appropriate to accord non-public treatment to the self-declared rates for Inbound Letter Post Small Packets and Bulky Letters and that these rates should be unsealed.

---

<sup>1</sup> Notice of the United States Postal Service of Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, April 29, 2022, at 1 (Notice).

## II. BACKGROUND

On November 16, 2018, the Postal Service filed a request seeking modification of the Market Dominant and Competitive product lists pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*<sup>2</sup> In the Request, the Postal Service proposed to: (1) remove Inbound Letter Post small packets and bulky letters from the Market Dominant Inbound Letter Post product on the Market Dominant product list; and (2) add identical services to the Competitive product list. Docket No. MC2019-17, Request at 1. The Postal Service did not propose prices for the affected mailpieces when it filed its Request. See *id.* at 9. In Order No. 4980, the Commission conditionally approved the transfer of Inbound Letter Post Small Packets and Bulky Letters items from the Market Dominant to the Competitive product list.<sup>3</sup> The Commission held that before Inbound Letter Post Small Packets and Bulky Letters may be added to the Competitive product list, the Postal Service must propose and the Commission must approve prices that satisfy 39 U.S.C. § 3633(a) and 39 C.F.R. part 3015.<sup>4</sup>

On October 29, 2019, the Postal Service provided notice of specific per-item and per-kilogram self-declared prices for Inbound Letter Post Small Packets and Bulky Letters to be effective on July 1, 2020, and filed these self-declared rates under seal.<sup>5</sup> In Order No. 5372, the Commission approved the proposed self-declared rates for

---

<sup>2</sup> Docket No. MC2019-17, United States Postal Service Request to Transfer Inbound Letter Post Small Packets and Bulky Letters, and Inbound Registered Service Associated with Such Items, to the Competitive Product List, November 16, 2018, at 1 (Docket No. MC2019-17, Request). 39 C.F.R. part 3020 was later renumbered as 39 C.F.R. part 3040. See Docket No. RM2019-13, Order Reorganizing Commission Regulations and Amending Rules of Practice, January 16, 2020, at 24 (Order No. 5407).

<sup>3</sup> Docket No. MC2019-17, Order Conditionally Approving Transfer, January 9, 2019, at 18 (Order No. 4980).

<sup>4</sup> Order No. 4980 at 19. 39 C.F.R. part 3015 was later renumbered as 39 C.F.R. part 3035. See Order No. 5407 at 24.

<sup>5</sup> Docket No. CP2019-155, Notice of the United States Postal Service of Effective Date and Specific Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, October 29, 2019, Attachment 2.

Inbound Letter Post Small Packets and Bulky Letters.<sup>6</sup> The Commission also noted the concerns raised by commenters regarding the Postal Service's request that the Commission afford non-public treatment to the specific per-item and per-kilogram self-declared rates for Inbound Letter Post Small Packets and Bulky Letters. Order No. 5372 at 16-17. The Commission stated that it would consider the appropriate degree of non-public protection, if any, to be accorded to the specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product in a future order. *Id.* at 17.

On January 23, 2020, the Commission issued a preliminary determination to unseal the self-declared rates for Inbound Letter Post Small Packets and Bulky Letters that went into effect on July 1, 2020.<sup>7</sup> After allowing for responses to its preliminary determination, the Commission determined that it was not appropriate to accord non-public treatment to the self-declared rates for Inbound Letter Post Small Packets and Bulky Letters and that the rates should be unsealed 7 days after the Universal Postal Union (UPU) published the rates.<sup>8</sup> Seven days after the UPU International Bureau (IB) published the self-declared rates in Circular No. 51, the Postal Service publicly filed the self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product that went into effect on July 1, 2020.<sup>9</sup>

In Order No. 5503, the Commission similarly preliminarily determined to unseal the self-declared rates for Inbound Letter Post Small Packets and Bulky Letters that took effect on January 1, 2021, and made its final determination to that effect in Order

---

<sup>6</sup> Docket Nos. MC2019-17 and CP2019-155, Order Granting Postal Service's Motion and Approving Prices for Inbound Letter Post Small Packets and Bulky Letters, December 19, 2019, at 2 (Order No. 5372).

<sup>7</sup> Docket Nos. MC2019-17 and CP2019-155, Notice of a Preliminary Determination to Unseal Self-Declared Rates for Inbound Letter Post Small Packets and Bulky Letters, January 23, 2020, at 1-2 (Order No. 5412).

<sup>8</sup> Docket Nos. MC2019-17 and CP2019-155, Final Determination to Unseal Self-Declared Rates for Inbound Letter Post Small Packets and Bulky Letters, March 9, 2020, at 1-2 (Order No. 5451).

<sup>9</sup> Docket Nos. MC2019-17 and CP2019-155, Notice of the United States Postal Service in Compliance with Order No. 5451, April 6, 2020, at 1 n.3, Attachment 1.

No. 5527.<sup>10</sup> Rates taking effect on January 1, 2022 were likewise unsealed after a preliminary determination in Order No. 5917 and a final determination in Order No. 5935.<sup>11</sup>

### III. DATA AT ISSUE

In the instant order, the Commission considers the appropriate degree of non-public protection, if any, to be accorded to the specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product that go into effect on January 1, 2023. Specifically, the Commission considers whether it is appropriate to unseal the rate chart the Postal Service provided with its Notice. See Notice, Attachment 2.

In Attachment 2, the Postal Service provides the following rate chart for the Inbound Letter Post Small Packets and Bulky Letters product:

**Inbound Letter Post Small Packets and Bulky Letters  
Rates Not of General Applicability for Mail Classification Schedule § 2340.6,  
Effective January 1, 2023**

	Per Piece in USD	Per Kilogram in USD
<b>Inbound Letter Post Small Packets and Bulky Letters, unless exception applies</b>	\$X.XX	\$X.XX

---

<sup>10</sup> Docket No. CP2020-120, Notice of a Preliminary Determination to Unseal Self-Declared Rates for Inbound Letter Post Small Packets and Bulky Letters, May 8, 2020 (Order No. 5503); Docket No. CP2020-120, Final Determination to Unseal Self-Declared Rates for Inbound Letter Post Small Packets and Bulky Letters, June 3, 2020 (Order No. 5527).

<sup>11</sup> Docket No. CP2021-94, Notice of a Preliminary Determination to Unseal Self-Declared Rates for Inbound Letter Post Small Packets and Bulky Letters, June 11, 2021 (Order No. 5917); Docket No. CP2021-94, Final Determination to Unseal Self-Declared Rates for Inbound Letter Post Small Packets and Bulky Letters, July 13, 2021 (Order No. 5935).

The instant order is limited to the self-declared rates provided in the rate chart referenced above. The Commission is not considering whether to unseal any of the supporting financial workpapers the Postal Service filed with its Notice at this time.

#### IV. THE POSTAL SERVICE'S APPLICATION FOR NON-PUBLIC TREATMENT

When it filed its Notice, the Postal Service filed the specific per-item and per-kilogram self-declared rates for Inbound Letter Post Small Packets and Bulky Letters and supporting workpapers under seal and requested non-public treatment for these materials. Notice at 4. The financial workpapers established cost coverage for Inbound Letter Post Small Packets and Bulky Letters at the proposed January 1, 2023 prices. *Id.* at 5. These workpapers include country-specific rates, volume, revenue, weight, cost, and cost coverage. Application at 3-4.

The Postal Service asserts that the materials filed under seal with its Notice contain commercial information “that, under good business practice, would not be disclosed to the public.” *Id.* at 1. Furthermore, the Postal Service maintains that it “does not believe that any commercial enterprise would voluntarily publish . . . non-public settlement rates or information pertaining to country-specific volumes, costs, and revenues.” *Id.* The Postal Service argues that, pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4), the materials it filed under seal with its Notice are exempt from mandatory disclosure. *Id.* at 1-2.

The Postal Service additionally argues that 3 years of higher self-declared rates have contributed to a decline in the Postal Service's E-format volumes, and that the marketplace has had ample time to adjust to the Postal Service's self-declared rates. *Id.* at 5. It states that “there is no reasonable basis on which to continue to compel the public disclosure of the Postal Service's self-declared rates” for E-format items, and that to do so would “distort the competitive market by regulatory fiat.” *Id.*

The Postal Service claims that if the materials filed with the Notice are disclosed publicly, it is likely that it will suffer commercial harm. *Id.* at 4. Specifically, the Postal Service identifies six potential commercial harms and provides one hypothetical

illustrative example for each alleged commercial harm. *Id.* at 7-10. The Postal Service claims that three of these six alleged commercial harms will result only if the financial workpapers are disclosed. First, the Postal Service alleges that designated operators could use information in the workpapers to gain an advantage when negotiating service agreements. *Id.* at 9. Second, the Postal Service asserts that competitors could analyze the workpapers to gain a market advantage. *Id.* at 9-10. Third, the Postal Service claims that disclosing the workpapers would expose other designated operators to similar commercial harms. *Id.* at 10. Accordingly, unsealing the self-declared rates alone does not implicate these three alleged commercial harms.

The remaining three alleged commercial harms discuss potential commercial injury to the Postal Service if the self-declared rates are publicly disclosed. *See id.* at 7-9. First, the Postal Service alleges that foreign postal operators would use public disclosure of the self-declared rates to their advantage and to the detriment of the Postal Service. *Id.* at 7-8. For example, the Postal Service claims that if the self-declared rates are disclosed then other designated operators could adjust their reciprocal self-declared rates. *Id.* Additionally, the Postal Service asserts that public disclosure of self-declared rates could harm the negotiating position of the Postal Service when it attempts to negotiate alternative rates for Inbound Letter Post Small Packets and Bulky Letters with these designated operators. *Id.* at 8. Relatedly, the Postal Service claims that if designated operators know the self-declared rates, then they could determine if remail opportunities exist in particular markets,<sup>12</sup> which could result in revenue loss for the Postal Service. *Id.*

Second, the Postal Service alleges that competitors could analyze the self-declared rates and the supporting financial workpapers to determine what the Postal Service must charge its customers to comply with the requirements applicable to

---

<sup>12</sup> For example, an opportunity for remail exists when two designated operators are charged different rates for the delivery of mail by a third designated operator in its country. The first designated operator could send its UPU letter post small packets and bulky letters through the second designated operator that is charged a lower rate for delivery in the third country.

Competitive products. *Id.* The Postal Service posits that competitors could then set their own rates for similar products under that threshold to freeze the Postal Service out of the market. *Id.*

Third, the Postal Service asserts that competitors could analyze the “rates, costs, revenues, volumes, and weights,” provided under seal to determine what products and rates to offer in the competitive domestic and international markets. *Id.* at 9-10. Furthermore, the Postal Service claims that customers could use the same information to negotiate better terms in contracts with the Postal Service or its competitors. *Id.*

## V. PRELIMINARY DETERMINATION TO UNSEAL SELF-DECLARED RATES FOR INBOUND LETTER POST SMALL PACKETS AND BULKY LETTERS

### A. Legal Standard

The Postal Accountability and Enhancement Act of 2006 (PAEA)<sup>13</sup> sets forth both a mechanism for the Postal Service to seek non-public treatment of information that it provides to the Commission and the legal standard for the Commission to evaluate the degree of appropriate confidentiality to be accorded to such information. As a threshold matter, for the Postal Service to seek non-public treatment, the information must be of the type and nature eligible for non-public treatment.

The Postal Service has asserted two statutory provisions for withholding the self-declared rates for Inbound Letter Post Small Packets and Bulky Letters and the supporting workpapers it filed with its Notice. Application at 2. First, 39 U.S.C. § 410(c)(2) provides that the Postal Service shall not be required to disclose “information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.”<sup>14</sup> Second, the Freedom of Information Act exempts from

---

<sup>13</sup> Pub. L. 109-435, 120 Stat. 3198 (2006).

<sup>14</sup> 39 U.S.C. § 410(c)(2). The Postal Service also cites 5 U.S.C. § 552(b)(3), which exempts from public disclosure information that is specifically exempted by another statutory provision, such as 39 U.S.C. § 410(c)(2). Application at 2.

public disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4).

After the Postal Service has identified its basis for seeking non-public treatment of the materials that it provides to the Commission, the PAEA also establishes the Commission’s specific authority as it relates to the information that the Postal Service claims to be non-public. Information filed in this proceeding and claimed by the Postal Service to be non-public shall be treated subject to the procedures of 39 U.S.C. § 504(g)(2) and (3). The Commission is not prohibited from publicly disclosing such information as long as two conditions are met. 39 U.S.C. § 504(g)(3)(A). First, the Commission must have engaged in a rulemaking to “establish a procedure for according appropriate confidentiality to information identified by the Postal Service [as non-public].”<sup>15</sup> Second, in determining the appropriate degree of confidentiality to be given to information alleged by the Postal Service to be non-public, the Commission must “balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.” 39 U.S.C. § 504(g)(3)(A).

Whenever non-public materials are provided to the Commission, an application for non-public treatment must also be provided. 39 C.F.R. § 3011.200(a). In addition to demonstrating that the materials designated as non-public contain information of a type and nature eligible for non-public treatment, the application must contain all of the information and arguments to fulfill the burden of persuasion that the materials should be withheld from the public. *Id.* § 3011.201(a). That application must include a “specific and detailed statement” containing, among other things, “[p]articular identification of the

---

<sup>15</sup> *Id.* In 2009, the Commission satisfied this condition when it established procedures for treatment of materials filed by the Postal Service and claimed to be non-public. Docket No. RM2008-1, Final Rule Establishing Appropriate Confidentiality Procedures, June 19, 2009 (Order No. 225) (codified at 39 C.F.R. part 3007). In 2018, these procedures underwent revision through notice-and-comment rulemaking. See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018 (Order No. 4679); Non-Public Information, 83 Fed. Reg. 31,258, 31,258-94 (July 3, 2018) (codified at 39 C.F.R. part 3007). 39 C.F.R. part 3007 was later renumbered as 39 C.F.R. part 3011. See Order No. 5407 at 25.



nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.” *Id.* § 3011.201(b)(4). The Commission preliminarily treats those designated materials, and the information contained therein, as non-public.<sup>16</sup> The Commission’s long-standing practice is that it does not *accept* any rationale for non-public treatment given in the application for non-public treatment unless the Commission makes a determination of non-public status, which may occur in response to a motion by an interested person or *sua sponte*. See Order No. 4679 at 11.

The Commission’s rules set forth the process by which the Commission determines the non-public treatment, if any, to be accorded to materials filed under seal. In this Notice, the Commission undertakes the preliminary procedural step—issuance of a “notice of its preliminary determination concerning the appropriate degree of protection, if any, to be accorded to materials claimed by any person to be non-public.” 39 C.F.R. § 3011.103(c). After allowing 7 days for interested persons to respond to this preliminary determination, the Commission will issue an order containing its final determination of what non-public treatment, if any, will be accorded to the per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product. This decision will apply the standard appearing in 39 C.F.R. § 3011.104. Section 3011.104(a) incorporates the standard for issuing a determination to publicly disclose materials claimed by the Postal Service to contain non-public information from 39 U.S.C. § 504(g)(3)(A): “the Commission shall balance the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.” 39 C.F.R. § 3011.104(a). In the sections that follow, the Commission first discusses its preliminary determination concerning the nature and extent of any likely commercial harm, followed by a discussion of the public interest in maintaining financial transparency.

---

<sup>16</sup> *Id.* § 3011.102(a). This is consistent with the Commission’s long-standing practice under former § 3007.23. See Order No. 4679 at 11.

## B. Alleged Commercial Harms

The Postal Service alleges three commercial harms will arise if the per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product are disclosed.

First, it asserts that disclosure of the self-declared rates would be used by foreign postal operators to the detriment of the Postal Service. Application at 7-8. For example, the Postal Service states that if the self-declared rates are disclosed before designated operators are required to provide their reciprocal self-declared rates to the UPU, then designated operators could adjust their reciprocal self-declared rates to the detriment of the Postal Service. *Id.* Additionally, the Postal Service claims that if self-declared rates are disclosed before the UPU IB publishes these rates, then the Postal Service would be disadvantaged when negotiating alternative rates with designated operators as the Postal Service does not expect to know the reciprocal self-declared rates. *Id.* at 8. Relatedly, the Postal Service claims that if designated operators know the self-declared rates, then they could determine if remail opportunities exist in particular markets, which could result in revenue loss for the Postal Service. *Id.*

It appears from the Postal Service's filings that the potential for this commercial harm concluded when the UPU IB published these rates to other designated operators.<sup>17</sup> As mentioned by the Postal Service, designated operators electing to charge self-declared rates were required to provide their self-declared rates to the UPU IB by June 1, 2022. *Id.* at 5-6. Thus, as the Postal Service's self-declared rates were not disclosed before June 1, 2022, designated operators could not adjust their reciprocal self-declared rates in response to discovering the rates charged by the Postal Service. Additionally, the potential for designated operators to gain an unfair advantage in negotiating alternative rates in bilateral service agreements also terminated when the UPU IB published the self-declared rates that will go into effect on January 1, 2023,

---

<sup>17</sup> The UPU published the self-declared rates on June 27, 2022. International Bureau (IB) Circular 110, Provisional 2023 Quality-linked Terminal Dues Rates, June 27, 2022.

because designated operators would know other designated operators' self-declared rates. Thus, as the UPU IB has already published the self-declared rates, unsealing these rates would not result in the commercial harm identified by the Postal Service.

In addition, disclosing the specific per-item and per-kilogram self-declared rates will not help designated operators to determine if remail opportunities exist in particular markets. Due to the nature of self-declared rates, designated operators already know that self-declared rates would be greater than default UPU terminal dues. Thus, designated operators know that opportunities for remail exist in markets where operators pay default UPU terminal dues rather than self-declared rates no matter what the specific self-declared rates are.<sup>18</sup> However, because disclosing the self-declared rates alone would not help designated operators to identify which markets will pay self-declared rates versus those that pay default terminal dues, it is unlikely that unsealing the specific per-item and per-kilogram self-declared rates would result in the identification of any particular remail opportunities.

Second, the Postal Service alleges that competitors could analyze the self-declared rates and the supporting financial workpapers to determine what the Postal Service must charge its customers to comply with the requirements applicable to Competitive products. Application at 8-9. For example, the Postal Service posits that competitors could then set their own rates for similar products under that threshold to freeze the Postal Service out of the market. *Id.* at 9.

Third, the Postal Service asserts that competitors could analyze the "rates, costs, revenues, volumes, and weights," provided under seal to determine what products and rates to offer in the competitive domestic and international markets. *Id.* Furthermore, the Postal Service claims that customers could use the same information to negotiate better terms in contracts with the Postal Service or its competitors. *Id.*

---

<sup>18</sup> The Postal Service notes that consistent with the Universal Postal Convention and the Convention Regulations, the Postal Service will charge UPU terminal dues for Inbound Letter Post Small Packets and Bulky Letters items entering from certain low-flow countries. Notice at 2-3.

The Commission preliminarily determines that disclosing the specific per-item and per-kilogram self-declared rates is unlikely to result in the second and third alleged commercial harms. It appears that these alleged commercial harms would only result if financial workpapers are disclosed in addition to the self-declared rates.<sup>19</sup> For example, competitors would not be able to analyze the unsealed data to determine the minimum per-item and per-kilogram rates required for the Inbound Letter Post Small Packets and Bulky Letters product to cover costs based upon the self-declared rates alone. Additionally, customers would not be able to determine “whether additional margin for net profit exists[.]” *Id.* at 7. Moreover, unsealing the self-declared rates alone would not disclose any data related to domestic commercial products that are not already public. Because the Commission is not proposing to unseal the financial workpapers at this time, these alleged commercial harms are not likely to result from disclosure of the specific per-item and per-kilogram self-declared rates only.

Furthermore, it is difficult to distinguish the alleged commercial injury posed by competitors and by customers by unsealing the self-declared rates and the commercial injury posed by competitors and by customers by publishing rates for Competitive products such as Priority Mail, Priority Mail Express, and First-Class Package Service. The Postal Service does not explain why the Commission should extend exceptional non-public protection to the self-declared rates when prices for other Competitive products are publicly available.

The Postal Service additionally argues that when these self-declared rates taken effect in 2023, the Postal Service will have “competed in this market for three years,” and that “[t]he marketplace has had ample time to adjust to the Postal Service’s self-

---

<sup>19</sup> See *id.* at 8 (“[a] competing package delivery service obtains a copy of the unredacted version of the rates *and* financial workpapers . . . .”) (emphasis added); *id.* at 9 (“[a] competing package delivery service obtains a copy of the unredacted version of the non-public materials exposing rates, costs, revenues, volumes, *and* weights . . . .”) (emphasis added). If the Postal Service believes that these specific commercial harms are likely to occur if just the per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product are unsealed, then, as the Commission has previously stated, the Postal Service must provide an illustrative example of how the harm would occur if just the self-declared rates are unsealed. See Order No. 5917 at 12 n.18.

declared rates for this competitively classified product.” *Id.* at 5. The Postal Service claims that “there is no reasonable basis on which to continue to compel the public disclosure of the Postal Service’s self-declared rates.” *Id.*

The Commission notes, however, that self-declared rates have currently been in effect for only 1 full fiscal year. *See supra* at 2. The financial performance of the product in FY 2022 will not be submitted to the Commission for review until December of 2022, and the Commission’s determination of the product’s FY 2022 compliance will not be available to the public until the Commission issues its findings in its Annual Compliance Determination in March 2023. Furthermore, even if the elapsed time since the July 1, 2020 implementation of self-declared rates was indeed sufficient for, as the Postal Service claims, “the marketplace . . . to adjust to the Postal Service’s self-declared rates,”<sup>20</sup> the Postal Service does not identify in its Application how such an adjustment would either increase the harm to the Postal Service from the unsealing of its self-declared rates or decrease the public interest in that unsealing.

### C. Public Interest

Between FY 1998 and 2020, the Postal Rate Commission (the predecessor agency to the Commission) and the Commission continuously expressed concerns regarding the financial performance of the Inbound Letter Post product.<sup>21</sup> The Postal Service frequently referenced the UPU terminal dues system as the driver of the product’s poor financial performance.<sup>22</sup>

Participants expressed similar concerns related to the financial performance of the Inbound Letter Post product and its unique pricing regime. For example, several

---

<sup>20</sup> See Application at 5.

<sup>21</sup> See Docket No. RM2018-2, Notice of Proposed Rulemaking to Revise the Periodic Reporting Requirements, July 12, 2018, at 16 (Order No. 4706); Docket No. ACR2019, *Annual Compliance Determination*, March 25, 2020, at 58 (FY 2019 ACD).

<sup>22</sup> See Docket No. ACR2019, United States Postal Service FY 2019 Annual Compliance Report, December 27, 2019, at 7-8 (FY 2019 ACR).

U.S. Representatives and a U.S. Senator filed comments in Docket No. IM2018-1 that stated because terminal dues are less than domestic rates, U.S. mailers paid more to mail items within the United States and U.S. companies are on an uneven playing field when competing with foreign companies.<sup>23</sup> Numerous U.S. businesses echoed concerns that terminal dues harm U.S. companies that compete against foreign businesses.<sup>24</sup>

On August 23, 2018, President Donald J. Trump issued a presidential memorandum in which he expressed similar concerns related to the terminal dues system.<sup>25</sup> Specifically, the Presidential Memorandum notes that the United States is not fully reimbursed by foreign operators for the cost of delivering inbound mail and that the current system distorts the international flow of small packets by incentivizing the shipping of goods from countries that pay lower terminal dues. Presidential Memorandum, section 2(c)(i).

Given the long history of concern discussed above, the public has an interest in the self-declared rates being transparent to ensure that the recent reform efforts address the weaknesses of the terminal dues system that has resulted in large negative contribution, which caused Market Dominant mailers to subsidize these mailpieces.<sup>26</sup>

---

<sup>23</sup> Docket No. IM2018-1, Comment Received from U.S. Representative Daniel W. Lipinski, July 5, 2018, at 1; Docket No. IM2018-1, Comments Received from U.S. Representatives Kenny Marchant and Ralph Abraham, July 3, 2018, at 2-3; Docket No. IM2018-1, Comment Received from U.S. Senator Bill Cassidy, M.D., July 3, 2018, at 1.

<sup>24</sup> Docket No. IM2018-1, Comments of Small Business & Entrepreneurship Council, July 2, 2018, at 1; Docket No. IM2018-1, Public Comment from Honey-Can-Do International, LLC, June 21, 2018, at 2; Docket No. IM2018-1, Comment Received from Range Kleen, June 19, 2018, at 2; Docket No. IM2018-1, Comment Received from Pretika Corporation, June 15, 2018, at 2; Docket No. IM2018-1, Comment Received from Dexas International Ltd., June 12, 2018, at 2.

<sup>25</sup> Presidential Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Homeland Security, Postmaster General, and Chairman of the Postal Regulatory Commission, August 23, 2018 (Presidential Memorandum), available at <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-secretary-state-secretary-treasury-secretary-homeland-security-postmaster-general-chairman-postal-regulatory-commission>.

<sup>26</sup> In the FY 2019 ACR, the Postal Service reported that Inbound Letter Post, which includes mailpieces that were transferred to Inbound Letter Post Small Packets and Bulky Letters, contributed negative \$164 million. FY 2019 ACR at 7.

Furthermore, there is public interest in maintaining financial transparency into a government establishment competing in commercial markets because these rates are only accessible to designated operators and there is potential for price discrimination.

The Commission preliminarily determines that unsealing the self-declared rates would promote the financial transparency of the Postal Service, a government establishment competing in commercial markets. As discussed above, there are long-standing and often-repeated concerns expressed about the UPU terminal dues system that have resulted in domestic mailers subsidizing the acceptance, processing, and delivery of UPU letter post small packets and bulky letters for more than 20 years. Unsealing the self-declared rates would provide greater transparency as to whether the recent changes to the UPU terminal dues system address these concerns. The Commission preliminarily determines that this interest and the interest in preventing price discrimination outweigh the nature and extent of likely commercial harm to the Postal Service if the self-declared rates are unsealed.

## VI. INITIAL ADMINISTRATIVE ACTIONS

Pursuant to 39 C.F.R. § 3011.103(c), the Commission preliminarily determines that the specific per-item and per-kilogram self-declared rates for Inbound Letter Post Small Packets and Bulky Letters should be unsealed. Any interested person, including the Postal Service, may file a response to this Notice by September 6, 2022.

## VII. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission preliminarily determines that the specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product should be unsealed.
2. Responses to this Notice are due by September 6, 2022.

By the Commission.

Erica A. Barker  
Secretary